Continuously since 1926, the "bad debt" provision of the Regulations has provided that:

> "In addition, [to the amount of mortgage indebtedness remaining unsatisfied after foreclosure sale and ascertained to be uncollectible] where the creditor buys in the mortgaged or pledged property, loss or gain is realized measured by the difference between the amount of those obligations of the debtor which are applied to the purchase or bid price of the property * * * and *the fair market value of the property.* The fair market value of the property shall be presumed to be the amount for which it is bid in by the taxpayer *in the absence of clear and convincing proof to the contrary.* If the creditor subsequently sells the property so acquired, the basis for determining gain or loss is *the fair market value of the property at the date of acquisition.*" (Reg. 69, Art. 153; Reg. 74, Art. 193; Reg. 77, Art. 193; Reg. 86, Art. 23(k)-3; Reg. 94, Art. 23(k)-3.)

By concurrence in this Regulation, through the reenactment without change of the "bad debt" provision of the various Revenue Acts (U. S. v. Cerecedo Hermanos Y Compania, 209 U. S. 337, 339) Congress showed that the criterion for determining gain or loss of taxpayers, (other than insurance companies) is the "*fair market value* of the property" bought in at foreclosure sale, and *not the amount of the bid* at the foreclosure sale, or the amount of the judgment credited on that bid.

Congress has not used any language in its definition of an insurance company's "gross income" to indicate

that what is a *capital loss* to an ordinary taxpayer is taxable *income* to a life insurance company.

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March 31, 1937.

I certify that this petition is presented in good faith and not for delay.

JOHN E. TARRANT.